



# NOTICE OF BOARD OF ADJUSTMENTS AND APPEALS MEETING

September 19, 2023

Members of the public are invited to attend remotely or in person through the options listed below. Public comment is welcome for items appearing on the agenda or on any matter of BOA concern. Each speaker is allotted a maximum of five minutes to speak.

Individuals wishing to comment on an agenda item must register in advance by contacting [boaplanning@auroragov.org](mailto:boaplanning@auroragov.org).

## View or Listen Live

Click to join:

<https://auroragov.webex.com/auroragov/j.php?MTID=m4425fbbcb531e37b39757184939f18d6>

Event Password: Aurora2020

## Call-in Participation

Call 720.650.7664

Access Code: 248 827 81469

Event Password: 28767220

## In-person Participation

Aurora Municipal Center  
Aspen Room, 2<sup>nd</sup> Floor  
15151 E Alameda Parkway  
Aurora, CO 80012

*Knock to be granted access to the building by security.*

## Translation/Accessibility

If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521. Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes al número 303.739.7521.



## AGENDA

Board of Adjustment and Appeals

Tuesday, September 19, 2023

5:30 p.m.

Hybrid Meeting

Aurora Municipal Center

15151 E Alameda Pkwy, 2nd Floor

Aurora, CO 80012

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Pages

1. CALL TO ORDER
2. ROLL CALL
3. ADOPTION OF AGENDA
4. BOA CANDIDATE INTERVIEW
  - 4.a Interview with Javier Chavez
5. APPROVAL OF MINUTES
  - 5.a Draft BOA Meeting Minutes for August 15, 2023 3
6. GENERAL BUSINESS
  - 6.a Case Number 10-23 - 15295 E Ohio Avenue 8

A request by the property owner, Francisco Arturo Gallegos Colunga, for the following Single-Family Dwelling Variance, for property zoned Low-Density Single-Family Residential District (R-1): To allow a side yard fence with an additional 1 foot and 5 inches of height for a total fence height of 7 feet and 5 inches as measured from the exterior of the property.

A request by the property owner, Abu Satar Bin Abdul Bashir, for the following Single-Family Dwelling Variances, for property zoned Original Aurora Low-Density Residential (MU-OA-R1): (1) To allow an additional 7 inches in front yard fence height which is 49 inches total; (2) To allow a reduction to the front setback of 12 inches resulting in a 6-inch setback; and (3) To allow a 50% visual permeability reduction for the front yard portion of the fence resulting in a completely opaque fence.

**7. OTHER BUSINESS**

**7.a Discussion of BOA Member Reappointments (Richard Palestro, Marty Seldin, and Rondell Swope)**

**8. ADJOURNMENT**

Planning Department  
City of Aurora, Colorado

## **SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS**

BOA Hearing Date: August 15, 2023  
Hearing Location: Virtual Public Hearing, held via WebEx  
Case Manager: Stephen Gubrud

Board Members Present: Lynn Bittel - Chairman  
Andris Berzins  
Kari Gallo  
Richard Palestro  
Ron Swope

City Staff Present: Rachel Allen – Attorney for Planning and Development Services  
Stephen Gubrud – City Planner  
Andrew Playter - City Code Enforcement Officer  
Steve Timms - Planning Supervisor  
Diane Webb - Project Coordinator

**Case Number: 08-23 – 992 Quari Court**

### **Description:**

Request by the property owner, Cinthia Martinez, for the following Single-Family Dwelling Variances:

- (1) An adjustment to the requirement of Code Section (146-4.2.3.F.1) which requires that accessory buildings of more than 120 square feet shall be set back a minimum of 5 feet from the side and rear property lines; and (2) An adjustment to the requirement of Code Section (146-4.6.5.C.2.a) which states: except for wedge-shaped lots, all driveways or parking surfaces located in the front yard shall not cover more than 40 percent of the total front yard area. For wedge-shaped lots, the maximum coverage shall be 50 percent.

Recommendation from staff to approve the variances as requested.

### **Case Presentation Given at the Hearing:**

Staff gave a presentation describing the applicant's request, the context of the neighborhood and the subject property, and an analysis of the request with respect to the Code Criteria of Approval. The applicant's request would (1) allow an existing detached garage that is set back approximately 3 feet from the side and rear property lines, and (2) allow for a driveway that covers more than 50% of the front yard area on a wedge-shaped lot.

### **Board Discussion at the Hearing:**

Mr. Bittel stated he had not visited the property and asked which board members had visited the site.

Mr. Berzins and Mr. Palestro both replied that they had visited the property. Ms. Gallo and Mr. Swope replied that they had not visited.

Mr. Palestro noted the ratio of grass to concrete illustrated in the plot plan does not meet code. There appears to be at least 60 % concrete vs. grass. This must be brought into compliance with no more than 50% concrete.

Mr. Berzins asked about utility or traffic easements on the property other than the existing utility boxes. He inquired about drainage from the spout on the west side of the garage and spillage onto the sidewalk during freezing conditions.

Mr. Gubrud replied there are no other sidewalk or right-of-way easements. There is no impermeable surface in that area, so freezing drainage should not be a concern.

Mr. Berzins noted the front face of the house does not match what is illustrated in the plot plan. An accurate drawing is needed to correctly determine the dimensions they are working with.

Mr. Gubrud agreed and stated the plan would need to be revised during the approval process if approved.

Ms. Gallo asked if the driveway that extends to the back garage is part of the variance requests.

Mr. Gubrud replied, no it would not be part of any violation.

Ms. Gallo asked about the fence that extends across the driveway.

Mr. Gubrud noted there is not actually a fence extending across the driveway as illustrated in the plot plan. This is an error. There is only a gate on the east side of the driveway.

Ms. Gallo asked if the gate would remain.

Mr. Gubrud replied, yes.

Mr. Bittel asked if there is adequate space near the side yard fences for first responders to access the area with their equipment as the area appears to be narrow.

Steve Timms, Planning Supervisor, responded that the space is 3 feet wide.

Mr. Gubrud added that there is adequate walking room. In terms of safety, the building must be fire-rated up to 5 feet from the property line.

Mr. Bittel called on Andrew Playter, City Code Enforcement Officer, to explain the department's involvement in the case.

Mr. Playter stated the property is classified as a chronic violator because they have received two or more violations within six months. The initial violation was for banners and illuminated signs advertising a home-operated tax business. While addressing the signage, the residents were informed that the driveway is not permitted to be all concrete. The second violation was issued when the fire department notified Code Enforcement that an auto shop was being operated at the home. The fire department had to respond to a fire in the backyard. Mr. Playter produced site pictures to illustrate his point.

Mr. Bittel noted that the code violation for operating an auto shop from the home is not being addressed at this meeting.

Mr. Playter concurred and stated the issue would be addressed separately.

Rachel Allen, Attorney for Planning and Development Services, asked that the additional information being provided by code enforcement be supplemented in the record and added to the official case.

Mr. Bittel acknowledged Ms. Allen's request and a discussion ensued regarding the method to enter the new information into the record.

Mr. Palestro noted the proposed variances significantly change the neighborhood, which is otherwise well-maintained. The requested changes are inconsistent with the design criteria and expectations of the community.

Mr. Bittel called on the homeowner to speak.

The homeowner, Cinthia Maldonado, 992 Quari Court, Aurora, CO 80011, deferred to the applicant, Robert Esparza, to speak on her behalf. She expressed a desire to comply with the city code.

Robert Esparza stated he is happy to bring the existing garage and driveway into compliance.

Ms. Maldonado added there is no auto shop business being run from the home anymore. They notified their tenant to vacate the property. Mr. Esparza reiterated this fact.

Mr. Bittel asked if the tenant had moved yet.

Ms. Maldonado replied, no. The tenant was notified to move by the end of the year.

Mr. Bittel noted Code Enforcement will need to determine if that timeframe is acceptable.

Ms. Gallo asked if any neighbors had expressed concern.

Mr. Gubrud replied no neighborhood concerns had been received.

Ms. Maldonado added there have been no issues with neighbors and they maintain a respectful relationship with them.

Mr. Berzins asked the applicant to clarify the design of the proposed driveway expansion as demonstrated in the plot plan.

Mr. Esparza stated he is trying to find a cost-effective solution that meets code and maintains the integrity of the neighborhood.

There was no further discussion of the case and no further questions from members of the Board.

**Public Comment Given at the Hearing:**

A member of the public identified online as "Taylor" attended virtually. She stated she is the neighbor directly to the north of the property. When asked if she had any comment, she replied she was mainly attending the meeting out of curiosity but was glad to see the auto shop is no longer operating. She had no further comment.

## **Board of Adjustment and Appeals Results**

A motion was made by Mr. Berzins and seconded by Mr. Palestro.

Move to approve the variance request to allow an existing detached garage that is set back approximately 3 feet from the side and rear property lines, with a caveat that if the structure is rebuilt, the setback must be returned to 5 feet, because the proposal complies with the required findings of Code Section 146, and:

- Does not have an adverse impact on adjacent properties;
- Is consistent with the neighborhood character;
- Is compatible with adjacent development;
- Will not have a negative impact on existing city infrastructure or public improvements; and
- Will achieve an internal efficiency of design.

### **Action Taken: Approved**

Votes for the Waiver: 5

Votes against the Waiver: 0

Absent: 1 (Seldin)

Abstaining: None

A motion was made by Mr. Berzins and seconded by Ms. Gallo.

Move to deny the variance request to allow for a driveway that covers more than 50% of the front yard area on a wedge-shaped lot because the proposal does not comply with the required findings of Code Section 146, and:

- Is not consistent with the neighborhood character;
- Is not compatible with adjacent development;
- Will have a negative impact on existing city infrastructure or public improvements; and
- Will not achieve an internal efficiency of design.

### **Action Taken: Denied**

Votes for the Waiver: 0

Votes against the Waiver: 5

Absent: 1 (Seldin)

Abstaining: None

### **Other Topics Discussed at the Hearing:**

Draft Board of Adjustment and Appeals minutes from July 18, 2023, were approved by those board members present, except for Mr. Berzins who abstained due to his absence from last month's meeting.

Mr. Berzins led the discussion of the Board of Adjustment process improvements noting that most of his concerns have been addressed by recent staff reports which have been much more comprehensive. Mr. Timms stated the staff is working on updating the BOA application to create a clearer application for citizens. This should improve the content and consistency of the applications received. Mr. Timms thanked the Board for their feedback and welcomed ongoing discussions. The Board would like to see BOA packets distributed to them no less than 5 days before the meeting. The bylaws and a possible time change for the meeting were also discussed. Mr. Bittel proposed that staff encourage applicants to attend in person. Although in-person attendance is not required, it is preferred. Mr. Timms and Mr. Gubrud acknowledged Mr. Bittel's request and agreed it was something that could be presented to future applicants.

Mr. Bittel announced that he is not renewing his term. General discussion ensued regarding the term limits, expiration dates, and process for reappointing members and appointing new members.

Rachel Allen, Attorney for Planning and Development Services, referenced UDO code regarding BOA bylaws and requested the information be distributed to board members. Ms. Allen also announced that the city has extended an offer to a new Planning Attorney with a tentative start date of August 28<sup>th</sup>.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Stephen Gubrud

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Lynn Bittel, Chairman

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Stephen Gubrud, City of Aurora





Planning Division  
 15151 E. Alameda Parkway, Ste. 2300  
 Aurora, Colorado 80012  
 303.739.7250

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**MEMORANDUM**

**To:** **To:** Lynn Bittel, Board of Adjustment Chairman  
 Board members: Andris Berzins, Kari Gallo, Ron Swope, Richard Palestro, Marty Seldin

**From:** Stephen Gubrud, Planner, Board of Adjustment staff liaison

**Date:** September 14, 2023

**Hearing Date:** September 19, 2023

**Subject:** BOAA Case No. 10-23 – 15295 E Ohio Ave.

**Notification:** The Notice of Variance Request was mailed to abutting property owners on September 8, 2023, and a notice of virtual public hearing sign was posted on the property on or prior to the same day in accordance with Code.

**Summary:** Request by the owner, Francisco Gallegos, for the following Single-Family Dwelling Variance:

- Requesting a variance from UDO code section 146-4.7.9.L.1 which states that new side and rear yard fences along arterial and collector streets may be a maximum of 6 feet in height. The applicant’s property is located in the R-1 zone district and they request a variance to allow an additional 1 foot and 5 inches of height for a total fence height of 7 feet and 5 inches as measured from the exterior, only along the Chambers Road frontage.

**Background Information:** The subject property is located at 15295 E Ohio Ave. in the Settlers Village neighborhood, within the Settlers Village #3 subdivision. The property is approximately 0.188 acres with an approximately 1,120 square foot primary residence, constructed in 1986 according to the Arapahoe County Assessor’s records. The subject property and surrounding neighborhood to the north and west is primarily zoned R-1 (Low-Density Single-Family Residential District) and is made up of primarily single-family homes. There is also a portion of R-3 (Medium-Density Multifamily District) zoning to the south and east, which contains primarily multifamily residential structures. The purpose of the R-1 zone district is to promote and preserve safe and attractive low-density, single-family residences. This district is intended to prohibit all commercial activities except for permitted home occupations. The R-1 district is generally comprised of medium to large suburban single-family lots, but development pursuant to a Small Residential Lot option is allowed in Subarea C. **(See Exhibit A – Vicinity Map).**

The applicant requests a variance to allow for an existing, approximately 7 foot and 5 inches tall, side yard fence which exceeds the UDO fence height limit of 6 feet. The existing non-compliant fence was identified in the Notice of Violation which was issued to the property owner on July 18<sup>th</sup> of 2023. Previously the applicant had a 6-foot solid fence along this property line. The applicant has stated one of their reasons for rebuilding the fence at this increased height is to enhance the safety and privacy of the property. The fence is sited directly on to Chambers Rd. and due to a significant grading disparity

between the house, back yard, and the property line, the previous 6-foot tall fence did a poor job of screening the side and rear yards from pedestrian view or access. As measured from the property owner's yard, the fence stands at 6 feet however, from the outside sidewalk the fence measures approximately 7 feet and 5 inches in height. This difference in elevation is accounted for by a retaining wall on the property, which the current fence sits in front of. The previous fence was replaced due to its dilapidated nature and the new fence occupies the same location and meets all other city code requirements. (See **Exhibit B– Application and Justification**).

**Analysis:** The requirements of the UDO as it pertains to this case are in place to promote a safe and aesthetically enjoyable environment for all Aurora residents. The newly constructed fence meets this intent by increasing the safety of the homeowner's property while enhancing the visual appeal of the fence itself. Furthermore, this proposal does result in an improved design by replacing the previously rotted and leaning fence which did not properly serve its function. The new fence will have no significant impact on surrounding properties, existing city infrastructure, or any planned improvements for the area.

**Required Findings:** According to Section 146-5.4.4.B.3 (Exhibit D), the Board of Adjustments and Appeals can grant variances based on the following criteria:

**1. Effect on adjacent properties. The proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods.**

*Staff Analysis:*

The proposed fence does not present a significant adverse effect on adjacent properties or the surrounding neighborhood.

**2. The proposed variance is consistent with the majority of the criteria as follows:**

**a. Improved Design**

*Staff Analysis:*

Staff finds that the proposed fence does achieve an improved design as presented because it would better fulfill the intent of a side yard fence to screen a portion of the yard and enhances the overall visual appeal of the property.

**b. Consistency with Neighborhood Character**

*Staff Analysis:*

Staff finds that the proposed fence is not necessarily consistent with the character of the neighborhood as properties with fences exceeding 6 feet in height are rare in the area.

**c. Compatibility with Adjacent Development**

*Staff Analysis:*

The proposed fence would result in a design that is generally compatible with adjacent residential development and is not located along a shared lot line with any other residential property.

**d. Impact on existing city infrastructure and public improvements**

*Staff Analysis:*

The proposed fence would not result in any negative impacts on existing city infrastructure or proposed future improvements.

**e. Internal efficiency of design**

*Staff Analysis:*

The proposed fence would result in an internal efficiency of design as it would address the noise and safety impacts of being situated along a busy arterial road such as Chambers which are aggravated by the drastic grading of the property.

f. **Control of external effects**

*Staff Analysis:*

The proposed fence would control for any external effects as it would not place any undue burden on the surrounding residential properties or the public realm.

**Conclusion:**

Based on the required findings of Code Section 146-5.4.4.B.3, staff finds the requested variance does meet the criteria as proposed because:

- It will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site and;
- The proposal would control for external effects and would not impact existing city infrastructure or any future public improvements.

**Staff Recommendation:**

Staff recommends **Approval** of the proposed variance as requested.

ATTACHMENTS:

- Exhibit A – Vicinity Map
- Exhibit B – Application and Justification
- Exhibit C – Site Photos
- Exhibit D – City Code Section 146-5.4.4.B.3





PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

15151 E. Alameda Pkwy, Suite 2300  
Aurora, Colorado 80012  
303-739-7250  
FAX: 303-739-7268

CASE # \_\_\_\_\_

APPLICATION TO THE BOARD OF ADJUSTMENT & APPEALS  
VARIANCE

ADDRESS OF PROPERTY AFFECTED: 15295 E. Ohio Ave. Aurora, CO. 80012

Zone District \_\_\_\_\_

Applicant	Name: <u>Francisco Arturo Gallegos Colunga</u>
	Address: <u>15295 E. Ohio Ave. Aurora, CO. 80012</u>
	Phone #: <u>(720) 628-5441</u> email <u>fco_arturo@msn.com</u>
Property Owner:	Name: <u>Francisco Arturo Gallegos Colunga</u>
	Address: <u>15295 E. Ohio Ave. Aurora, CO. 80012</u>
	Phone #: <u>(720) 628-5441</u> email <u>fco_arturo@msn.com</u>

Signature \_\_\_\_\_ 

Variance requested:  
To be a 8 ft. fence from outside grade to efectively be a 6 ft fence from property grade .  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above request does not conform to Section(s) \_\_\_\_\_ of the Aurora City Code, which requires \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CASE # \_\_\_\_\_

**Type, or print clearly,** the name and complete address (including zip code) of each abutting property owner:

ABUTTING PROPERTY ADDRESS:

NAME & ADDRESS OF PROPERTY OWNER

770 Granby Cir. Auora, CO. 80012

770 Granby Cir. Auora, CO. 80012

768 Granby Cir. Aurora, CO. 80012

768 Granby Cir. Aurora, CO. 80012

15275 E Ohio Ave. Aurora, CO. 80012

15275 E Ohio Ave. Aurora, CO. 80012

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To whom it may concern,

My name is Francisco Gallegos I am the owner of the house located at 15295 E Ohio Ave. in Aurora. Where I also reside with my family.

I am writing you regarding a fence code violation notice that I received.

A new fence installation was needed at my property because it was old and damaged; and it was being push out to the street by the dirt due to a retaining wall collapse.

The grade of my property is higher than the street grade (around two feet higher) and it is only divided by the retaining wall. In order to install a new fence, I had to redo the retaining wall first, which it had to be at least two feet tall from street ground, the retaining wall is just around a foot from the street sidewalk.

When I decided to build the new fence, I had to keep in mind the safety and privacy of my family. To reach that goal the first option was to build it at 6ft. fence over my property grade, it was going to reach the desire height, but the retaining wall was going to be uncovered; and the second option was to install it at 8 ft. over the street grade. That way the retaining wall was going to be covered and it was going to reach the desire height. But by going for the second option, I soon enough found out that I was violating a building code.

Currently with fence at 8ft tall from street grade is like I had a 6 ft. fence, due to the grade of my property, but having to reduce it to a 6 ft. from street grade is like having a 4 ft. fence and that give us the feeling of not being safe, or not having the desire privacy on a high trafficked street. My dwelling is the closest to the street than the rest my neighbors all along the block from Exposition Ave. to Ohio Ave. That is why I had the fence installed at that height, mainly for safety and privacy concerns.

Please consider all above when making your decision.

Sincerely yours.

Francisco A Gallegos.

Jana Atkinson 5-3-88

EXHIBIT B

CITY OF AURORA BUILDING INSPECTION DIVISION PLOT PLAN

ADDRESS 15295 E. Ohio Ave

LEGAL DESCRIPTION

LOT

BLK

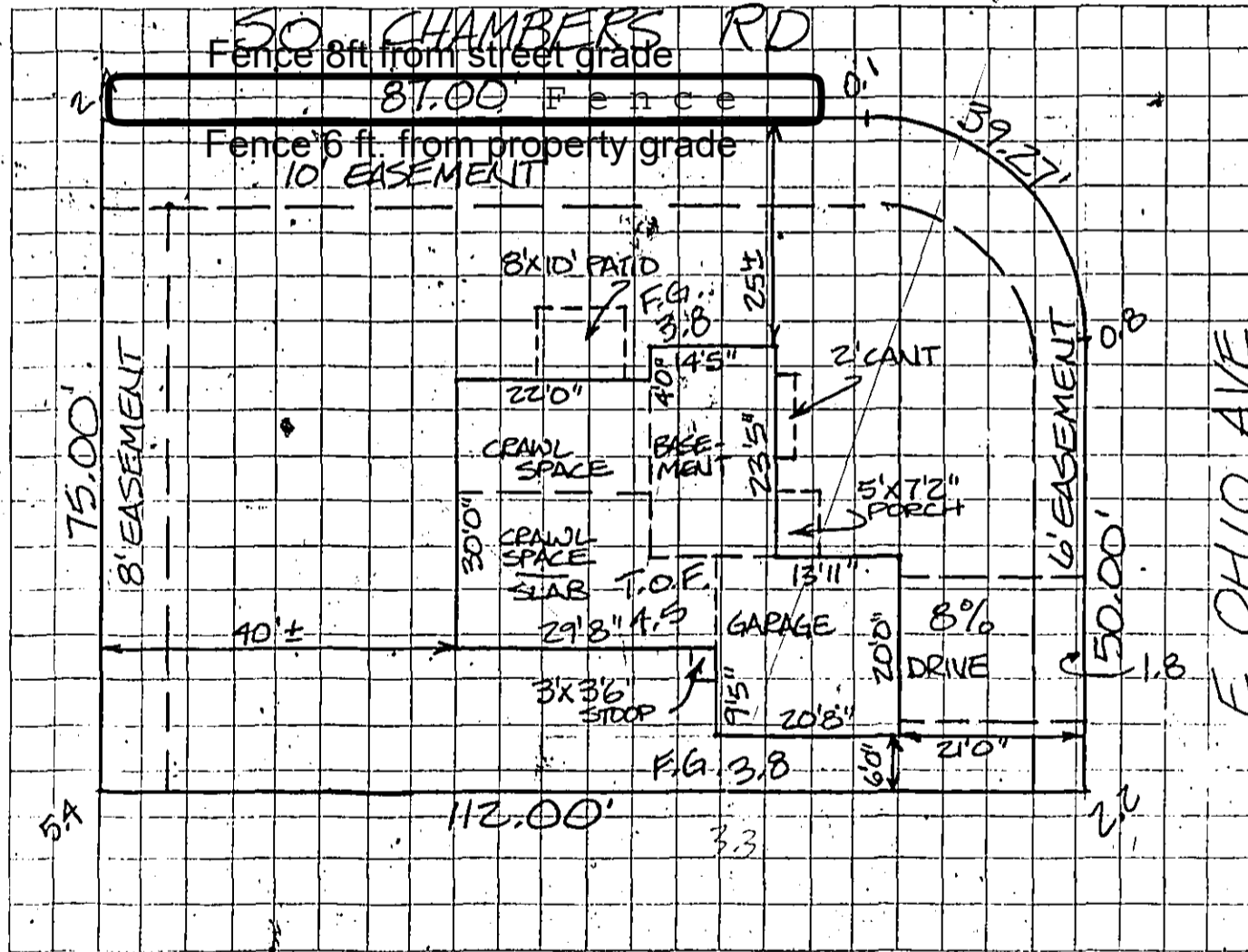
ADDITION SETTLERS VILLAGE FILING NO 3

NOTE: INDICATE THE FOLLOWING INFORMATION - STREETS, ALLEYS AND/OR EASEMENTS; FRONT, REAR AND SIDE YARD SETBACKS; DIMENSIONS BETWEEN BUILDINGS AND DIMENSIONS OF BUILDINGS. INDICATE EXISTING STRUCTURES WITH BROKEN LINE.....PROPOSED STRUCTURES BY SOLID LINE

Affected area

GRAPH SQUARES ARE 5' X 5' OR 1" = 20'

INDICATE NORTH IN CIRCLE



I/We certify that no use will be operated on the land or in the structure (s) identified above except the use (s) set forth above unless a new certificate of occupancy is obtained, the uses will be operated in compliance with the regulations, contained in the zoning chapter of the revised municipal code.

M.J. BROCK

[Signature]

Name(s) of Owner(s) of Site & Structure(s) (Print)

DO NOT WRITE BELOW THIS LINE

Signature of Owner(s) or Authorized Representative

DISTRICT

PCZD SFD

APPROVED AS NOTED

CM

DATE

9-19-85



## EXHIBIT B

DUSTIN & TERRY GIBBENS  
772 S GRANBY CIR  
AURORA CO 80012

OAK RIDGE APARTMENTS DELAWARE  
LLC  
600 MAMARONECK AVE  
HARRISON NY 10528

STAR HEARTHSTONE LLC  
PO BOX 530292  
BIRMINGHAM AL 35253

GREENBROOK TOWNHOUSE ASSN  
15150 E ILIFF AVE  
AURORA CO 80014

SHARIF & USMON TOSHMATOV  
768 S GRANBY CIR  
AURORA CO 80012

SCOTT SHULER  
770 S GRANBY CIR  
AURORA CO 80012

DONALD NEROES  
15275 E OHIO AVE  
AURORA CO 80012

CORNELIUS & CHIEKO GILMER  
15255 E OHIO AVE  
AURORA CO 80012

















## B. Single-Family Dwelling Variance

All applicable provisions of Section 146-5.3 (Common Procedures) apply unless specifically modified by the provisions of this Section 146-5.4.4.B.

### 1. Applicability

This Section 146-5.4.4.B applies to all applications for a variance from the standards and of provisions of this UDO or to the provisions of Chapter 90 as they relate to the modification of an existing single-family dwelling or the lot on which it is located that do not qualify for approval as a Minor Amendment under Section 146-5.3.15.A. This section may not be used to vary the standards or provisions of this UDO for single-family homes that have not yet obtained a certificate of occupancy or Manufactured Homes that have not yet been installed in accordance with Chapter 90.

### 1. Procedure

- a. Planning Director shall review the application and forward a recommendation to the Board of Adjustment and Appeals pursuant to all applicable provisions of Section 146-5.3 (Common Procedures).
- b. The Board of Adjustment and Appeals shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 146-5.3.

### 2. Criteria for Approval

An application for a Single-family Dwelling Variance shall be approved if the Board finds that the proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods and a majority of the following criteria have been met.

- a. The proposed variance results in improved design.
- b. The proposed variance does not adversely affect the character of lower density residential areas.
- c. The proposed variance will result in development that is compatibility with adjacent land development.
- d. The proposed variance will not result in undue or unnecessary burdens on existing infrastructure and public improvements, or arrangements have been made to mitigate those impacts.
- e. The proposed variance results in development that achieves internal efficiency for its residents and does not endanger public health or convenience.
- f. The proposed variance results in development that controls external effects on nearby land uses, movement and congestion of traffic, noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, and features to prevent detrimental impacts on public health, welfare, safety or convenience.



Planning Division  
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**MEMORANDUM**

**To:** **To:** Lynn Bittel, Board of Adjustment Chairman  
 Board members: Andris Berzins, Kari Gallo, Ron Swope, Richard Palestro, Marty Seldin

**From:** Stephen Gubrud, Planner, Board of Adjustment staff liaison

**Date:** September 14, 2023

**Hearing Date:** September 19, 2023

**Subject:** BOAA Case No. 11-23 – 1036 Kramer Ct

**Notification:** The Notice of Variance Request was mailed to abutting property owners on September 8, 2023, and a notice of virtual public hearing sign was posted on the property on or prior to the same day in accordance with Code.

**Summary:** Request by the property owner, Abu Satar Bin Abdul Bashir, for the following (3) Single-Family Dwelling Variances:

- Request #1: An adjustment to the requirements of UDO code section 146-4.7.9.L.1, which requires that front yard fences must be no taller than 42 inches. They are requesting an additional 7 inches in front yard fence height, which is 49 inches in total.
- Request #2: An adjustment to the requirements of UDO code section 146-4.7.9.L.1, which states that front yard fences must be setback from the sidewalk by at least 18 inches. The applicant is requesting a 12-inch reduction to the front setback, resulting in an approximate 6-inch setback.
- Request #3: An adjustment to the requirements of UDO code section 146-4.7.9.L.2, which states that front yard fences must be at least 50% visually permeable. The applicant is requesting a closed-style fence that is 100% opaque.

**Background Information:** The subject property is located at 1036 Kramer Ct. in the Havana Park neighborhood, within the Lydeva Heights #1 subdivision. The property is approximately 0.165 acres with an approximately 1,368 square foot primary residence, constructed in 1955 according to the Arapahoe County Assessor’s records. The subject property and surrounding neighborhood are primarily zoned OA-R-1 (Original Aurora Low Density Residential) and is made up of primarily single-family homes. The purpose of the OA-R-1 zone district is to promote and protect residential neighborhoods and improve the overall image and character of Original Aurora. The building form standards and permitted uses work together to promote desirable residential areas. These regulations shall reinforce the existing development patterns while also encouraging reinvestment and new types of housing. **(See Exhibit A – Vicinity Map).**

The applicant requests three variances for this case, all pertaining to an existing side and front yard fence. The first is to allow for a front yard fence that exceeds the maximum height of 42 inches by 7 inches,

resulting in an approximately 49-inch-high fence. The second is to allow for a front yard setback reduction of 12 inches, resulting in an approximate 6-inch setback from the back of the sidewalk. The third request is to allow for a 100% opaque, closed-style, fence in the front yard area. City code requires that front yard fences be no more than 50% opaque. The existing side and front yard fence was identified in the Notice of Violation which was issued to the property owner on July 5<sup>th</sup> of 2023.

The applicant has stated their reason for wishing to construct the fence was to create a safer environment for their children to play in the front yard. The applicant also states that the fence was built to create additional privacy between their property and the property directly to the south as the neighboring property has an entry/exit which directly faces the applicant's front yard. The closed style, wooden picket, fence extends into the side yard where it increases in height to approximately 72 inches which is the maximum height allowed within the side yard area. The homeowner has also erected a chain link style fence and gate in their front yard which extends into the side yard on the north side of the home. Chain link is not an allowable fence material within residential districts and therefore cannot qualify for a variance. The removal of the chain link fence will be handled by Code Enforcement and no discussion is needed by the Board. **(See Exhibit B– Application and Justification).**

**Analysis:** the UDO requirements for residential fences are in place to establish safe and visually appealing residences throughout the city. They also play a large role in creating a safe environment for motorists and pedestrians alike. The existing conditions on this property do not align with that intent as the existing setback encroachment may limit the space meant for pedestrians, bicyclists, and other right-of-way users to safely navigate the area. Although front yard fences do not require a permit staff always encourages homeowners to reach out to the City prior to the start of any construction projects to ensure that all codes and requirements are being met.

**Required Findings:** According to Section 146-5.4.4.B.3 (Exhibit D), the Board of Adjustments and Appeals can grant variances based on the following criteria:

1. ***Effect on adjacent properties. The proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods.***

*Staff Analysis:*

The proposed fence may present an adverse effect to the neighbor to the south as the overly tall, closed style, fence does share a lot line with said property.

2. **The proposed variance is consistent with the majority of the criteria as follows:**
  - a. **Improved Design**

*Staff Analysis:*

Staff finds that the proposed fence does not achieve an improved design as presented because it does not provide the features required by code to maintain a visually appealing residential neighborhood.

- b. **Consistency with Neighborhood Character**

*Staff Analysis:*

Staff finds that the proposed fence is not consistent with the character of the neighborhood as very few homes in the neighborhood have front yard fences and the majority of existing front yard fences are split rail style.

- c. **Compatibility with Adjacent Development**

*Staff Analysis:*

The proposed fence would not result in a design that is generally compatible with adjacent residential development as the closed style fence may create a visibility issue.

- d. **Impact on existing city infrastructure and public improvements**

*Staff Analysis:*

The proposed fence may result in negative impacts on existing city infrastructure as sidewalks in this area are quite narrow and any encroachment may exacerbate this problem.

**e. Internal efficiency of design**

*Staff Analysis:*

The proposed fence would not result in an internal efficiency of design as it would encroach into the required front setback and is shared with the neighboring property.

**f. Control of external effects**

*Staff Analysis:*

The proposed fence does not control for certain external effects as it may adversely affect pedestrian traffic and the proposal does not provide mitigation for the lack of visual permeability or height.

**Conclusion:**

Based on the required findings of Code Section 146-5.4.4.B.3, staff finds the requested variances do not meet the criteria as proposed because:

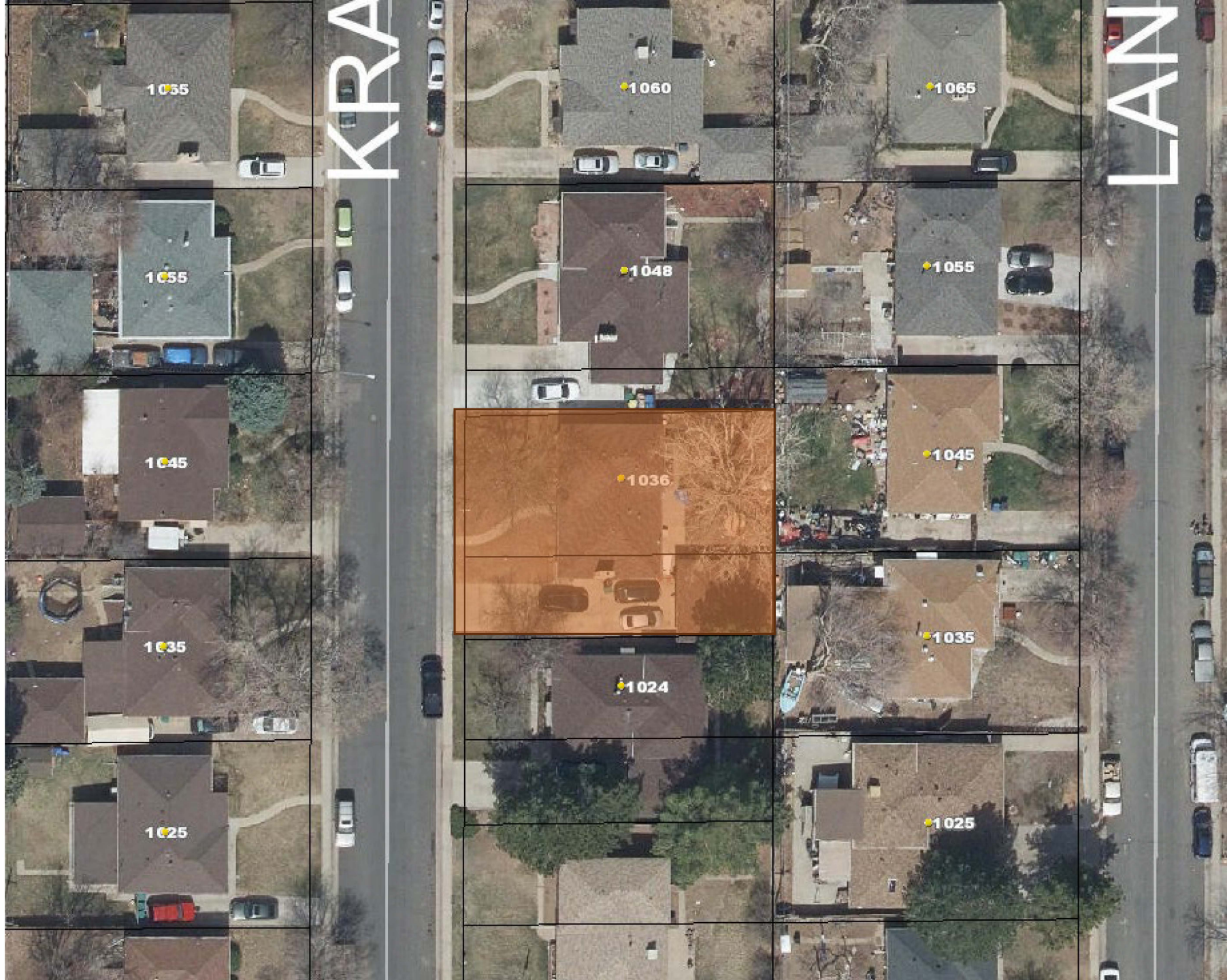
- They are not consistent with the character of the surrounding neighborhood;
- Would not result in an improved design that achieves internal efficiency to the site and;
- The proposals do not properly control for or mitigate external effects and may impact existing city infrastructure or any future public improvements.

**Staff Recommendation:**

Staff recommends **denial** of the proposed three variances as requested.

## ATTACHMENTS:

- Exhibit A – Vicinity Map
- Exhibit B – Application and Justification
- Exhibit C – Site Photos
- Exhibit D – City Code Section 146-5.4.4.B.3





PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

15151 E. Alameda Pkwy, Suite 2300  
Aurora, Colorado 80012  
303-739-7250  
FAX: 303-739-7268

CASE # \_\_\_\_\_

APPLICATION TO THE BOARD OF ADJUSTMENT & APPEALS  
VARIANCE

ADDRESS OF PROPERTY AFFECTED: 1036 Kramer Ct Aurora Co 80010  
Zone District \_\_\_\_\_

x Applicant

Name: Abu Sutar Bin Abdul bashir  
Address: 1036 Kramer Ct Aurora Co 80010

Phone #: 303-909-9199 email Abdul Sutar 7728@gmail.com

Property Owner:

Name: Abu Sutar Bin Abdul bashir

Address: 1036 Kramer Ct Aurora Co 80010

Phone #: 303-909-9199 email Abu Sutar 7728@gmail.com

Signature 

Variance requested:

x Front Fence set back is less than 18 inches side  
walk. Front / side fence is solid (not 50%) open  
& over 42 inches in height.

The above request does not conform to Section(s) \_\_\_\_\_ of the Aurora City  
Code, which requires \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CASE # \_\_\_\_\_

Type, or print clearly, the name and complete address (including zip code) of each abutting property owner:

ABUTTING PROPERTY ADDRESS: NAME & ADDRESS OF PROPERTY OWNER

Left Neighbor 1048 Kramer Ct Aurora CO 80010  
Name: Unknown

Right neighbor 1024 Kramer Ct Aurora CO 80010  
Name: unknown

Blank lines for additional property information.

## City of Aurora

This is 1036 Kramer ct Aurora co 80010

I move to 1036 on January 6,2020 I like the area because I came to 1036 I talk to the old owner they said they neighbor are troubled maker that's why they are leaving 1036 they also said to me " for 4 month the neighbor will be nice to you and they will start being rude to you.

Because of the neighbor I am moving" after the old owner leave. The neighbor 1024 start being nice to me and saying the people who used to live at 1036 they are very rude and the people who live at 1024 said they were so happy that me and my family moved to 1036 I was happy to heard This. The 1024 neighbor they were so nice to us but then I don't know what happened they started being rude. I heard a lot of people left 1036 because of the 1024 neighbor being rude. They call the cops on my kid because they were outside the front yard playing. The police came and said where is the 2 years old child I said to police what happened? They said " your neighbor 1024 made a complaint. After I talk to the police they left the police was so rude to us too. When my kids go outside the 1024 neighbor let their dog come to my yard and scared my kids. My kids cry because of their my kids are scared of dogs. I said to 1024 neighbor to stop but they start laughing and say the F word to me

and to my older daughter. They always called the cops for everything my kids can't play outside. My kids are scared to go outside. The 1024 neighbor everyday they wake up in the morning and come to their front yard and clean their front yard and trow the trash on my driveway and I have to clean it. My kids are scared to stay at home they are scared to play outside. My 6 years old boy always have a nightmare and start crying I ask him what happened he said I saw the neighbor dogs bite me on my hand and I ask for help but the 1024 neighbor started laughing. My kids always have this kinds of nightmares. One time the neighbor said to my 17 years old daughter that she wear hijab because she look ugly and her hair is bad. My daughter start crying after hearing this from 1024 neighbor. I called the cops because of all of this but the cops say show the prof I did show the prof but they said they can't do anything so I planned to put the fence and I have put the fence after putting the fence my kids feel safe and they start playing outside and the neighbor can't see my family. Please help me and my family I really need this fence the way I put them I have put this fence for my kids safety after I got a paper from city of Aurora I said to my kids I have to change the fence my kids started crying to let the fence as it is. Please help me I want the fence the way I have put it.

EXHIBIT B





CITY OF AURORA  
Neighborhood Support Division  
15151 E. Alameda Pky 4th Floor  
Aurora, CO 80012

Code Officer: Timothy #117 at 303-739-7571  
Office: 303-739-7280 Fax: 303-739-7191  
Email: tiknox@auroragov.org

Tim's Supervisor 3/739-7110

Breezy Mannes

1730693

303  
-739 4110

## Courtesy Notice

ADDRESS: 1036 N KRAMER CT AURORA 800104114

NAME:

### Code Area

### Section

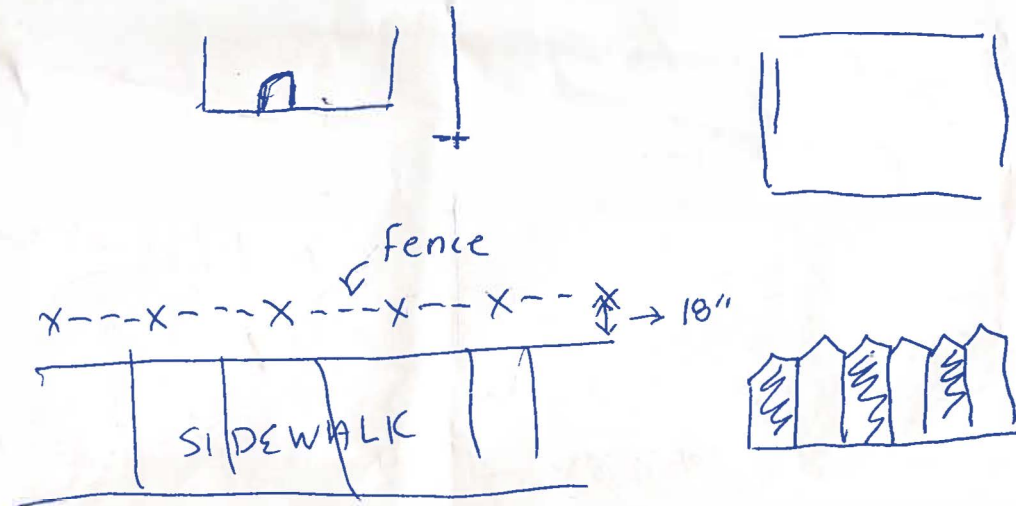
Fences	Fence Requirements 146-4.11.1 D 2
Fences	Fence Setback 146-4.7.9 L 1
Fences	Front Yard Req 146-4.7.9 L 1
Fences	Height Rest. 146-4.7.9 L 1

### Officer Comments

IN THE NEXT 45 DAYS, PLEASE MAKE THE FOLLOWING CORRECTIONS TO THE FRONT AND SIDE YARD FENCE.

- PLEASE ENSURE THE SIDE YARD FENCE IS SET BACK FROM THE CURB AT LEAST 4 FEET. *18"*
- PLEASE ENSURE THAT THE SIDE YARD FENCE IS 50% OPEN, ALONG THE SIDE PORTION TOWARDS THE BACK YARD. A SIMPLE SOLUTION WOULD BE TO REMOVE EVERY OTHER PICKET
- PLEASE ENSURE THAT THE FENCE DOES NOT EXCEED 42 INCHES IN HEIGHT ALONG THE SIDE YARD.

I AM AWARE THAT THIS MAY TAKE TIME SO PLEASE KEEP OUR DEPARTMENT POSTED THROUGHOUT THE COURSE OF REPAIRS. THANK YOU



This courtesy notice has been issued to advise you a code violation(s) listed above has been observed on your property. Please make the necessary corrections within 45 day(s). The property will be re-inspected on 09/03/2023.

DATE/TIME SERVED: July 20, 2023

IF YOU HAVE QUESTIONS OR NEED MORE INFORMATION PLEASE CALL CODE OFFICER: Timothy #117 at 303-739-7571

## EXHIBIT B

TAMARRA FIELDS & CHASE  
DARLINGTON  
1025 KRAMER CT  
AURORA CO 80010

WILLIAM HICKS  
1040 KINGSTON ST  
AURORA CO 80010

JUAN & FLORA SIMENTAL  
1020 KINGSTON ST  
AURORA CO 80010

MATT & ANITA AVALOS  
1024 KRAMER CT  
AURORA CO 80010

CONGER RESIDENCE  
1050 KINGSTON ST  
AURORA CO 80010

DANIEL MENDIOLA ET AL  
1048 KRAMER CT  
AURORA CO 80010

WILLIAM COLLUM & KATHERINE  
MCKENNA  
1055 KRAMER CT  
AURORA CO 80010

ROSE SABO  
1045 KRAMER CT  
AURORA CO 80010

MELQUISEDEC ZAPATA MORALES ET AL  
1035 KRAMER CT  
AURORA CO 80010



















## B. Single-Family Dwelling Variance

All applicable provisions of Section 146-5.3 (Common Procedures) apply unless specifically modified by the provisions of this Section 146-5.4.4.B.

### 1. Applicability

This Section 146-5.4.4.B applies to all applications for a variance from the standards and of provisions of this UDO or to the provisions of Chapter 90 as they relate to the modification of an existing single-family dwelling or the lot on which it is located that do not qualify for approval as a Minor Amendment under Section 146-5.3.15.A. This section may not be used to vary the standards or provisions of this UDO for single-family homes that have not yet obtained a certificate of occupancy or Manufactured Homes that have not yet been installed in accordance with Chapter 90.

### 1. Procedure

- a. Planning Director shall review the application and forward a recommendation to the Board of Adjustment and Appeals pursuant to all applicable provisions of Section 146-5.3 (Common Procedures).
- b. The Board of Adjustment and Appeals shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 146-5.3.

### 2. Criteria for Approval

An application for a Single-family Dwelling Variance shall be approved if the Board finds that the proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods and a majority of the following criteria have been met.

- a. The proposed variance results in improved design.
- b. The proposed variance does not adversely affect the character of lower density residential areas.
- c. The proposed variance will result in development that is compatibility with adjacent land development.
- d. The proposed variance will not result in undue or unnecessary burdens on existing infrastructure and public improvements, or arrangements have been made to mitigate those impacts.
- e. The proposed variance results in development that achieves internal efficiency for its residents and does not endanger public health or convenience.
- f. The proposed variance results in development that controls external effects on nearby land uses, movement and congestion of traffic, noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, and features to prevent detrimental impacts on public health, welfare, safety or convenience.